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March 26, 2021

Via CDX and Email

Thomas P. Carroll
Acting Director, Air Enforcement Division
U.S. Environmental Protection Agency
MC 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: *United States v. Orion Engineered Carbons, LLC*, Consent Decree (Case No. 6:17-cv-01660) – Notice of Intent to Assert Claim of Force Majeure – Eleventh Supplemental Update

Dear Mr. Carroll:

Orion Engineered Carbons, LLC (“Orion”) provides this letter in response to EPA’s letters dated April 24, 2020, October 21, 2020, January 25, 2021, and March 18, 2021. EPA’s April 24, 2020 letter requested updates regarding Orion’s March 23, 2020 notice of intent to assert force majeure. EPA’s April 24, 2020 letter requested an initial response within four weeks and supplemental updates every four weeks thereafter. Orion provided its initial response on May 21, 2020 (the “Initial Response”). This letter is Orion’s eleventh supplemental update.

Orion has reviewed EPA’s March 18, 2021 letter. The letter recognizes that Orion has [REDACTED] but states that EPA, DOJ, and LDEQ (“Government Plaintiffs”) continue to defer judgment on “the particulars” of Orion’s force majeure claim. [REDACTED]

Orion appreciated meeting with Government Plaintiffs on February 24, 2021 to discuss [REDACTED]

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Orion continues to utilize best efforts to minimize force majeure delays and to fulfill its obligations under the Consent Decree. This is despite numerous obstacles. Most recently, the February 2021 North American cold wave had crippling and widespread effects due to record cold temperatures and extensive ice accumulation. [REDACTED]

Consistent with Government Plaintiffs' calls for open communication, Orion proposes another technical meeting in April to provide a status update and address any additional questions Government Plaintiffs may have. Additionally, consistent with DOJ's inquiry during our February 8, 2021 legal meeting as to whether Orion had prepared a draft amendment to the Consent Decree, we are preparing a first draft of a Consent Decree amendment. We plan to share the draft amendment with Government Plaintiffs in April for review and comment. The draft will not specify revised deadlines, which can be added following additional discussion and prior to filing.

We ask that you treat the redacted portions in the public version of this submittal as confidential business information (CBI) pursuant to 40 C.F.R. Part 2. Orion's updated responses to the questions in EPA's April 24, 2020 letter follow.

Ivanhoe

1. Clarify the meaning of the term, "pollution control projects required by the CD at [] Ivanhoe."

No change since Initial Response.

2. Do the PM Early Warning Systems, baghouses and incineration devices necessary to achieve MACT compliance remain operational?

No change since Initial Response.

3. Are any of Orion's [REDACTED] employees working onsite, and if so, how many?

[REDACTED]

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4. What activities are the employees performing? Are they making carbon black?



5. Provide any updates received from Defendant's contractors related to COVID-19.

See response to Question 3.

6. Provide any updates, orders, or directives from state and local officials related to COVID-19.

The following is a brief summary of orders affecting Orion issued since the tenth supplemental update:

Louisiana

March 2: Governor issues Proclamation 29 JBE 2021 again moving Louisiana into Phase 3 of reopening, continuing the statewide mask mandate, and requiring businesses like Orion to maintain at least moderate social distancing between all employees.¹

Governor also issues Proclamation 18 JBE 2021 extending emergency provisions imposing travel restrictions on public employees, suspending in-person shareholder meetings, and imposing a variety of restrictions on the operations of government entities, among other measures.²

March 3: LDEQ issues Twenty-First Amended Declaration of Emergency and Administrative Order. LDEQ declares that “an emergency exists” and that “measures are necessary to prevent serious threats to life or safety.” The order extends certain regulatory deadlines, among other measures.³

¹ State of Louisiana, Proclamation 29 JBE 2021 (Mar. 2, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/29-JBE-2021-State-of-Emergency-RenewingCOVID-19ResilientPhase3.pdf>.

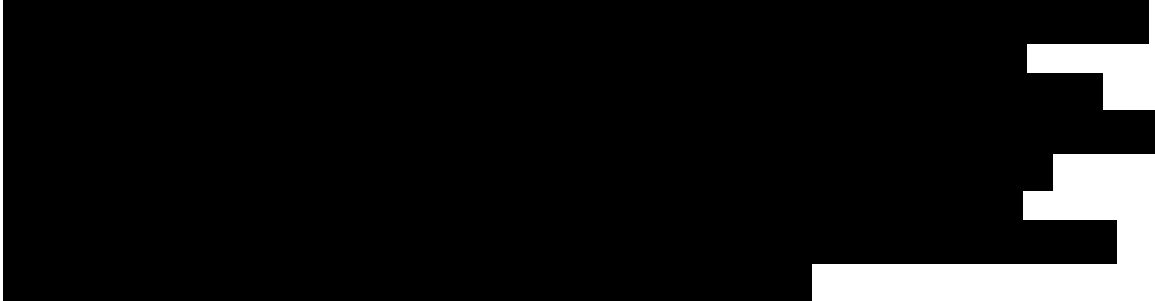
² State of Louisiana, Proclamation 30 JBE 2021 (Mar. 2, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/30-JBE-2021-State-of-Emergency-COVID-19-Extension.pdf>.

³ Louisiana Department of Environmental Quality, Twenty-First Amended Declaration of Emergency and Administrative Order (Mar. 3, 2021), https://www.deq.louisiana.gov/assets/docs/emergency_declarations/Twenty-FirstAmendedDeclarationofEmergencyCOVID-19.pdf.

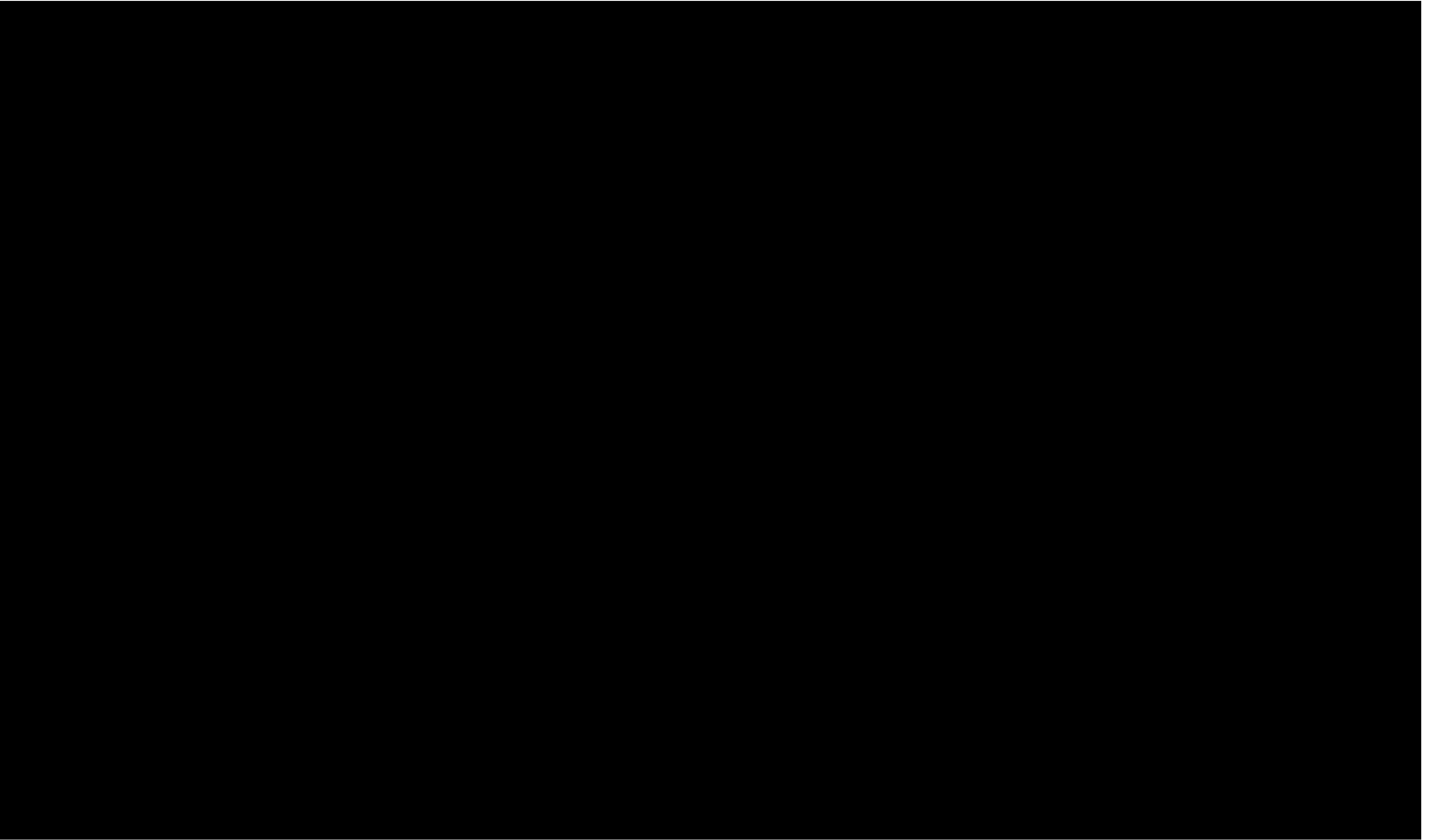
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Additionally, the Governor has made clear that “should there be an increase in the number of confirmed COVID-19 cases or should the number of COVID-19 related hospitalizations threaten the ability of the health care system to properly respond, it may be necessary to go back to the full restrictions in the [original] Stay at Home order.”⁴

7. Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, (broken out by month), that specifies the work being performed, the number of contractors expected to be on site (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.



⁴ State of Louisiana, Proclamation 29 JBE 2021 (Mar. 2, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/29-JBE-2021-State-of-Emergency-RenewingCOVID-19ResilientPhase3.pdf>.



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Conclusion

Orion remains committed to working with EPA to fulfill the requirements of the Consent Decree while protecting the health and safety of Orion's employees and contractors. Orion will provide its next update on or before April 23, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Painter'.

Corning Painter
Chief Executive Officer
Orion Engineered Carbons, GmbH

cc: Kellie Ortega, U.S. Environmental Protection Agency
David Friedland, Beveridge & Diamond, P.C.
Jason Dunn, U.S. Department of Justice
Katherine Abend, U.S. Department of Justice
Celena Cage, Louisiana Department of Environmental Quality
Brandon Williams, Louisiana Department of Environmental Quality
Dwana King, Louisiana Department of Environmental Quality